

AMENDED IN SENATE MARCH 21, 2006

**SENATE BILL**

**No. 1254**

---

**Introduced by Senator Ackerman**

February 8, 2006

---

An act to amend Section 511 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1254, as amended, Ackerman. ~~Alternative workweek. Employee-selected flexible work schedule.~~

~~Existing law requires that an alternative workweek schedule proposed by an employer be adopted through a  $\frac{2}{3}$  majority vote of the employees in a secret ballot. Existing law also requires the employer to pay overtime compensation to employees who work more than their regularly scheduled hours under the alternative workweek. Employers must also make reasonable accommodations to find a work schedule that does not exceed 8 hours per day for employees who were eligible to vote in the election but are unable to work the alternative workweek hours. Existing law provides that knowing and intentional violation of this provision is a misdemeanor.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

*Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law authorizes the adoption by  $\frac{2}{3}$  of employees in a work unit of alternative workweek schedules providing for workdays no longer than 10 hours within a 40-hour workweek.*

*This bill would permit an individual nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek, and would allow an employer to implement this schedule without any obligation to pay overtime compensation. The bill would require the Division of Labor Standards Enforcement in the Department of Industrial Relations to enforce this provision and adopt regulations.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. This act shall be known and may be cited as the*
- 2     *Workplace Flexibility Act of 2006.*
- 3     *SEC. 2. The Legislature finds and declares all of the*
- 4     *following:*
- 5         *(a) Small businesses and their workers suffer from outdated*
- 6         *and inefficient workplace and overtime rules that do not allow*
- 7         *for sufficient flexibility for employers and workers to schedule*
- 8         *their hours of work for mutual benefit.*
- 9         *(b) California overtime laws, which are unique in the country,*
- 10         *make it difficult for most employers to reach an agreement with*
- 11         *an individual worker that would allow a flexible work schedule.*
- 12         *(c) Existing law does not permit an employer to allow an*
- 13         *individual worker to choose a flexible work schedule of four*
- 14         *10-hour days per week without overtime being paid.*
- 15         *(d) As a consequence, millions of California workers do not*
- 16         *have the opportunity to take advantage of a flexible work*
- 17         *schedule that would benefit the workers and their families.*
- 18         *(e) If workers were permitted to elect to work four 10-hour*
- 19         *days per week without the payment of overtime, it would allow*
- 20         *them to spend much-needed time with their families, it would*
- 21         *lessen traffic congestion on our crowded roads and highways,*
- 22         *and it would allow workers to spend one day a week on personal*
- 23         *matters, such as volunteering at a child's school, scheduling*
- 24         *medical appointments, and attending to other important family*
- 25         *matters that often are difficult to schedule with a*
- 26         *five-day-per-week, eight-hour-per-day schedule.*
- 27         *(f) It is the intent of the Legislature in enacting the Workplace*
- 28         *Flexibility Act of 2006 to protect workers as follows:*

1     (1) A worker may not be forced to work more than eight hours  
2     in a day without receiving overtime, but, instead, he or she may  
3     request a flexible work schedule of up to four 10-hour days per  
4     week and an employer may agree to this schedule without having  
5     to pay overtime for the ninth and tenth hours worked per day in  
6     that schedule.

7     (2) An employer will be required to pay overtime rates after  
8     10 work hours in a day for workers who have chosen a flexible  
9     schedule pursuant to this act.

10    (3) An employer will be required to pay double normal pay  
11    after 12 work hours in a day for a worker who has chosen a  
12    flexible schedule under this act.

13    (4) Any worker, including one who chooses a flexible schedule  
14    under this act, will receive overtime for any hours worked over  
15    40 hours in a single week.

16    (g) Workplaces that are unionized already allow workers to  
17    choose to work four 10-hour days; however, it is virtually  
18    impossible for workers of nonunionized workplaces to enjoy this  
19    benefit.

20    (h) No compelling public policy reason exists for this  
21    discrepancy in the flexibility of work schedules between  
22    unionized and nonunionized workers.

23    SEC. 3. Section 510 of the Labor Code is amended to read:

24    510. (a) Eight hours of labor constitutes a day's work. Any  
25    work in excess of eight hours in one workday and any work in  
26    excess of 40 hours in any one workweek and the first eight hours  
27    worked on the seventh day of work in any one workweek shall be  
28    compensated at the rate of no less than one and one-half times  
29    the regular rate of pay for an employee. Any work in excess of  
30    12 hours in one day shall be compensated at the rate of no less  
31    than twice the regular rate of pay for an employee. In addition,  
32    any work in excess of eight hours on any seventh day of a  
33    workweek shall be compensated at the rate of no less than twice  
34    the regular rate of pay of an employee. Nothing in this section  
35    requires an employer to combine more than one rate of overtime  
36    compensation in order to calculate the amount to be paid to an  
37    employee for any hour of overtime work. The requirements of  
38    this section do not apply to the payment of overtime  
39    compensation to an employee working pursuant to any of the  
40    following:

1 (1) An alternative workweek schedule adopted pursuant to  
2 Section 511.

3 (2) An alternative workweek schedule adopted pursuant to a  
4 collective bargaining agreement pursuant to Section 514.

5 (3) An alternative workweek schedule to which this chapter is  
6 inapplicable pursuant to Section 554.

7 (4) *An employee-selected flexible work schedule implemented*  
8 *pursuant to Section 511.5.*

9 (b) Time spent commuting to and from the first place at which  
10 an employee's presence is required by the employer shall not be  
11 considered to be a part of a day's work, when the employee  
12 commutes in a vehicle that is owned, leased, or subsidized by the  
13 employer and is used for the purpose of ridesharing, as defined in  
14 Section 522 of the Vehicle Code.

15 (c) This section does not affect, change, or limit an employer's  
16 liability under the workers' compensation law.

17 *SEC. 4. Section 511.5 is added to the Labor Code, to read:*

18 *511.5. (a) Notwithstanding Section 511 or any other law or*  
19 *order of the Industrial Welfare Commission, an individual*  
20 *nonexempt employee may work up to 10 hours per workday*  
21 *without any obligation on the part of the employer to pay an*  
22 *overtime rate of compensation, except as provided in subdivision*  
23 *(b), if the employee requests this schedule in writing and the*  
24 *employer approves the request. This shall be referred to as an*  
25 *overtime exemption for an employee-selected flexible work*  
26 *schedule.*

27 *(b) If an employee-selected flexible work schedule is*  
28 *implemented, the employer shall pay overtime at one and*  
29 *one-half the employee's regular rate of pay for all hours worked*  
30 *over 40 hours in a workweek or over 10 hours in a workday,*  
31 *whichever is the greater number of hours. All work performed in*  
32 *excess of 12 hours per workday and in excess of eight hours on a*  
33 *fifth, sixth, or seventh day in the workweek shall be paid at*  
34 *double the employee's regular rate of pay.*

35 *(c) An employer may inform its employees that it is willing to*  
36 *consider an employee request to work an employee-selected*  
37 *flexible work schedule, but shall not induce a request by*  
38 *promising an employment benefit or threatening an employment*  
39 *detriment.*

1 (d) An employee or employer may discontinue the  
2 employee-selected flexible work schedule at any time by giving  
3 written notice to the other party. The request will be effective the  
4 first day of the next pay period or the fifth day after notice is  
5 given if there are fewer than five days before the start of the next  
6 pay period, unless otherwise agreed to by the employer and the  
7 employee.

8 (e) This section does not apply to any employee covered by a  
9 valid collective bargaining agreement or employed by the state,  
10 a city, county, city and county, district, municipality, or other  
11 public, quasi-public, or municipal corporation, or any political  
12 subdivision of this state.

13 (f) This section shall be liberally construed to accomplish its  
14 purposes.

15 (g) (1) The Division of Labor Standards Enforcement shall  
16 enforce this section and shall adopt or revise regulations in a  
17 manner necessary to conform and implement this section.

18 (2) This section shall prevail over any inconsistent provisions  
19 in any wage order of the Industrial Welfare Commission.

20 SEC. 5. The provisions of this act are severable. If any  
21 provision of this act or its application is held invalid, that  
22 invalidity shall not affect other provisions or applications that  
23 can be given effect without the invalid provision or application.

24 SECTION 1. ~~Section 511 of the Labor Code is amended to~~  
25 ~~read:~~

26 511. (a) ~~Upon the proposal of an employer, the employees of~~  
27 ~~an employer may adopt a regularly scheduled alternative~~  
28 ~~workweek that authorizes work by the affected employees for no~~  
29 ~~longer than 10 hours per day within a 40-hour workweek without~~  
30 ~~the payment to the affected employees of an overtime rate of~~  
31 ~~compensation pursuant to this section. A proposal to adopt an~~  
32 ~~alternative workweek schedule shall be deemed adopted only if it~~  
33 ~~receives approval in a secret ballot election by at least two-thirds~~  
34 ~~of affected employees in a work unit. The regularly scheduled~~  
35 ~~alternative workweek proposed by an employer for adoption by~~  
36 ~~employees may be a single work schedule that would become the~~  
37 ~~standard schedule for workers in the work unit, or a menu of~~  
38 ~~work schedule options, from which each employee in the unit~~  
39 ~~would be entitled to choose.~~

~~(b) An affected employee working longer than eight hours, but not more than 12 hours in a day, under an alternative workweek schedule adopted pursuant to this section, shall be paid an overtime rate of compensation of no less than one and one-half times the regular rate of pay of the employee for any work in excess of the regularly scheduled hours established by the alternative workweek agreement and for any work in excess of 40 hours per week. An overtime rate of compensation of no less than double the regular rate of pay of the employee shall be paid for any work in excess of 12 hours per day and for any work in excess of eight hours on those days worked beyond the regularly scheduled workdays established by the alternative workweek agreement. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.~~

~~(c) An employer shall not reduce an employee's regular rate of hourly pay as a result of the adoption, repeal, or nullification of an alternative workweek schedule.~~

~~(d) An employer shall make a reasonable effort to find a work schedule not to exceed eight hours in a workday, in order to accommodate any affected employee who was eligible to vote in an election authorized by this section and who is unable to work the alternative schedule hours established as the result of that election. An employer shall be permitted to provide a work schedule not to exceed eight hours in a workday to accommodate any employee who was hired after the date of the election and who is unable to work the alternative schedule established as the result of that election. An employer shall explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in the manner provided by subdivision (j) of Section 12940 of the Government Code.~~

~~(e) The results of any election conducted pursuant to this section shall be reported by an employer to the Division of Labor Statistics and Research within 30 days after the results are final.~~

~~(f) Any type of alternative workweek schedule that is authorized by this code and that was in effect on January 1, 2000, may be repealed by the affected employees pursuant to this~~

1 ~~section. Any alternative workweek schedule that was adopted~~  
2 ~~pursuant to Wage Order Number 1, 4, 5, 7, or 9 of the Industrial~~  
3 ~~Welfare Commission is null and void, except for an alternative~~  
4 ~~workweek providing for a regular schedule of no more than 10~~  
5 ~~hours' work in a workday that was adopted by a two-thirds vote~~  
6 ~~of affected employees in a secret ballot election pursuant to wage~~  
7 ~~orders of the Industrial Welfare Commission in effect prior to~~  
8 ~~1998. This subdivision does not apply to exemptions authorized~~  
9 ~~pursuant to Section 515.~~

10 ~~(g) Notwithstanding subdivision (f), an alternative workweek~~  
11 ~~schedule in the health care industry adopted by a two-thirds vote~~  
12 ~~of affected employees in a secret ballot election pursuant to~~  
13 ~~Wage Orders 4 and 5 in effect prior to 1998 that provided for~~  
14 ~~workdays exceeding 10 hours but not exceeding 12 hours in a~~  
15 ~~day without the payment of overtime compensation shall be valid~~  
16 ~~until July 1, 2000. An employer in the health care industry shall~~  
17 ~~make a reasonable effort to accommodate any employee in the~~  
18 ~~health care industry who is unable to work the alternative~~  
19 ~~schedule established as the result of a valid election held in~~  
20 ~~accordance with provisions of Wage Order 4 or 5 that were in~~  
21 ~~effect prior to 1998.~~

22 ~~(h) Notwithstanding subdivision (f), if an employee is~~  
23 ~~voluntarily working an alternative workweek schedule providing~~  
24 ~~for a regular work schedule of not more than 10 hours' work in a~~  
25 ~~workday as of July 1, 1999, an employee may continue to work~~  
26 ~~that alternative workweek schedule without the entitlement of the~~  
27 ~~payment of daily overtime compensation for the hours provided~~  
28 ~~in that schedule if the employer approves a written request of the~~  
29 ~~employee to work that schedule.~~